

(412) 644-5754

Date: February 7, 1994

CASE NO. 92-ERA-30

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In the Matter of: :
 :
THOMAS J. SAPORITO, JR., :
Complainant, :
 :
v. :
 :
ARIZONA PUBLIC SERVICE COMPANY (APS), :
 :
and :
 :
THE ATLANTIC GROUP (TAG), :
Respondents. :
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Appearances:

David K. Colapinto, Esq.
Stephen M. Kohn, Esq.
Kohn, Kohn & Colapinto, P.C.
For the Complainant

Thomas A. Schmutz, Esq.
Newman & Holtzinger, P.C.
For the Respondent APS

William W. Nexsen, Esq.
Stackhouse, Rowe & Smith
For the Respondent TAG

Before: MICHAEL P. LESNIAK
Administrative Law Judge

RECOMMENDED ORDER OF DISMISSAL

1. This proceeding arose out of a complaint filed on or about January 27, 1992 by Thomas J. Saporito, Jr. alleging that he had been denied a position as an Instrument Control (I&C) Technician at the Palo Verde Nuclear Generating Station (PVNGS) Unit One in violation of the ERA. Complainant filed an Amended Complaint on April 8, 1992 adding TAG as a party defendant. On July 21, 1992, I ordered that trial would be bifurcated. The liability portion of the trial was held in Phoenix, Arizona, from September 28, 1992 until October 7, 1992.

2. On May 10, 1993 I issued a Recommended Decision and Order on liability finding for the Complainant, Thomas J. Saporito, Jr. and against the Respondent APS. In the case of Thomas J. Saporito, Jr. v. TAG, I found for the Respondent, TAG and against the Complainant.

3. Subsequent thereto, on or about August 11, 1993, I was informed that as a result of an internal investigation conducted by APS, APS learned that the individual responsible for hiring I&C technicians for the Unit One refueling outage, Frank Warriner, knew that Saporito had previously engaged in protected activity and that such activity was a motivating factor in Mr. Saporito's nonselection for the Unit One refueling outage. On August 6, 1993, Mr. Warriner admitted to APS legal counsel that his testimony regarding his awareness of Mr. Saporito's past activities and reasons for not selecting him were untruthful. Mr. Warriner learned of Mr. Saporito's protected activity from the Unit 2 I&C Supervisor, Steven Grove, another witness at trial. (See letter of Thomas A. Schmutz, Esq. to me dated August 11, 1993, with exhibits).

4. On August 23, 1993, APS stipulated as follows:

- a. Mr. Frank Warriner, the APS supervisor who made the decision not to select Mr. Saporito for the Unit One outage, knew at the time he made that decision that Mr. Saporito had previously engaged in protective activity.
- b. A motivating factor in Mr. Warriner's decision not to select Mr. Saporito for the Unit One outage was that Mr. Saporito had previously engaged in protective activity.

5. On or about August 24, 1993 I referred the matter of possible perjury on the part of Stephen Grove and Frank Warriner in my courtroom to the United States Attorney for the District of Arizona. (See my letter to the Honorable Janet Napolitano dated August 24, 1993).

6. On January 21, 1994, I received a "Joint Motion for Approval Settlement Agreement and for Dismissal with Prejudice" which included one exhibit. Exhibit 1 to the Joint Motion, attached herewith, is a copy of the Settlement Agreement reached between Thomas J. Saporito and the Respondents. I issued Post Hearing Order Number Seven on January 26, 1994 scheduling a, "Pre-Damage Trial Conference" indicating to the parties that I could not recommend to the Secretary approval of said agreement primarily because the amount of money payable to the Complainant designated, "personal injuries and sickness" was inadequate.

Subsequent thereto, I received a letter from Attorney Thomas A. Schmutz dated January 31, 1994, which stated that in addition to the settlement agreement before me, APS and Saporito reached another agreement meant to dispose of any claims or causes of action Saporito might have over and above his 210/211 claims. Under this settlement, Mr. Saporito received in excess of \$100,000.00 to compensate him for, among other things, compensatory damages such as pain and suffering and emotional distress. This letter is also attached herewith.

7. Under the circumstances, considering the total settlement herein, I recommend to the Secretary of Labor that this case be dismissed with prejudice. I believed that the terms of the total agreement are fair, adequate and a reasonable settlement of Complainant's allegations against the Respondents. I also recommend the terms of the settlement agreement be maintained confidential and that they not be disclosed to anyone except as set out by said settlement agreement, attached herewith, or where required by law.

Wherefore, the above considered, it is recommended that the Secretary dismiss with prejudice Mr. Saporito's complaint against APS and TAG and hold the terms of the settlement agreement confidential.

MICHAEL P. LESNIAK
Administrative Law Judge

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Attachments

